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No. 404.

Supreme Court of the United States.

OCTOBER TERM, 1905.

ANNA VALENTINA,
Appellant,
vs.
JAMES W. MERCER, Sheriff of Bergen County, New Jersey.

On Appeal from the Circuit Court of the United States for the District of New Jersey.

BRIEF OF THE ATTORNEY-GENERAL OF NEW JERSEY, FOR MERCER, SHERIFF.

MACCRELLISH & QUIGLEY, PRINTERS, TRENTON, N. J.

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This is an appeal, taken pursuant to Section 764 of the Revised Statutes of the United States, to this court from an order of the Circuit Court of the United Sates for the District of New Jersey, refusing to order the issuance of a writ of *habeas corpus*, a petition for which was presented to said Circuit Court pursuant to the provisions of Section 753 of the United States Revised Statutes. The order of the Circuit Court refusing the writ of *habeas corpus* is found on page 86 of the record, and reads:

> "The writ applied for is denied because in my opinion it appears from the petition that the petitioner is not entitled thereto."

The grounds alleged in the petition as a basis for the issuance of the extraordinary writ of *hebeas corpus* are very general in character, and after reciting that the petitioner is, by an order of the Bergen County Court of Oyer and Terminer, confined in the jail of said county under sentence of death, charges that said order

> "is illegal and contrary to the Fourteenth Amendment of the United States in this: That it has been made by the said Bergen County Court of Oyer and Terminer without due process of law, and that it deprives the said Anna Valentina of her liberty and life without due process of law, and denies to her the equal protection of the laws."

These averments are, of course, mere conclusions of law and not matters of fact, and of themselves amount to nothing in support of the application. *Kohl* vs. *Lehlbach, 160 U. S. 293; Cuddy's case, 131 U. S. 280.*

The petition further states in a most general way that the proceedings at the trial, resulting in her conviction,

> "were without authority of law and null and void; that the question of her guilt or innocence of murder was not entertained by the Court or submitted to the jury as the law of the State of New Jersey expressly requires in all cases where parties are indicted for murder, but, on the contrary, evidence was taken in said court in said proceedings merely to determine the degree of her guilt; * * * that the evidence taken of said proceedings was limited to that purpose, and the alleged trial conducted with that sole object in view, your petitioner being assumed to be guilty of the crime of murder; * * * that said proceeding was entirely unwarranted by the law of New Jersey; * * * that said Anna Valentina was deprived of all benefit of the presumption of innocence and of reasonable doubt to which she was entitled by law, and that the questions of self-defense and manslaughter, fairly raised by her testimony, were excluded from the consideration of the jury, and the question submitted to them was

limited by the Court simply as to whether she was guilty of murder in the first degree or not, and the benefit of reasonable doubt was confined to that point; * * * that after her said conviction a writ of error was sued out of the Court of Errors and Appeals, the highest tribunal of the State of New Jersey, * * * for the purpose of reviewing the record of said conviction and of obtaining a new trial for her on said indictment, but that said Court dismissed said writ and refused a new trial, and * * * ignored the foregoing point, although the same was raised as herein stated; * * * that her counsel stated to the jury in opening the case for the defense that the said Anna Valentina, when arraigned in open court, made confession of the commission of this crime, and that the verdict of the jury would be simply to determine what the degree of her guilt should be; * * * that it became and was the duty of the Court to have contradicted said statement and to have told the jury that there was no evidence of any such fact before them or to be considered by them, but, on the contrary, * * * the Court adopted this misstatement of counsel and commended and submitted it to the consideration of the jury; * * * that the Court of Errors and Appeals in passing upon this point * * * held that it did not become the duty of the Court at such trial to contradict such misstatement of fact on the part of the attorney of a defendant charged with murder, unless the defendant requested so to do, but * * * said defendant did not understand the English language and was not aware of what her counsel had told the jury, and could not make such a request of the Judge, it became the duty of the trial Court to have caused the interpreter to translate what counsel had said, but that said Court failed to do so; * * * that she is a subject of the King of Italy; that under the treaty between said country and the United States of America she is entitled to the same treatment as a citizen of the United States, * * * and that the said treaty has been violated in the case of said Anna Valentina; that said indictment is fatally defective and void under the

> Constitution of New Jersey and the Constitution of the United States, because it does not set out the crime of which the said Anna Valentina was charged, or of any offense known to the criminal law of New Jersey, and is, therefore, not due process of law under the Fourteenth Amendment of the Constitution of the United States."

Annexed to the petition is a copy of the treaty between the United States and the kingdom of Italy, and sent up with the petition, and apparently made a part of it, although it does not expressly so appear, is a copy of the entire record, including the stenographic report of the evidence taken at the trial, the charge of the learned trial Judge to the jury, the evidence and judgment entered thereon, the writ of error from the New Jersey Court of Errors and Appeals to the trial court, and the assignments of error, some twenty-five in number. (*Case, p. 80.*)

The writ of error was elaborately argued and involved a consideration by the highest court of the State of New Jersey, not only of matters of law, to which exceptions might have been taken, but, under the practice obtaining in New Jersey (*P. L. 1898, p. 915, sec. 136*), the entire record of the proceedings was returned, whereby the reviewing court was required to examine such record and to determine whether or not on the trial the defendant

> "suffered manifest wrong or injury, either in the admission or rejection of testimony, whether objection was made thereto or not, or in the charge of the Court, or in the denial of any matter by the Court, which was a matter of discretion, whether a bill of exceptions was settled, signed and sealed thereto, or error assigned thereon, or not."

By the express provisions of this beneficent statute the Appellate Court was required to "remedy such wrong or injury and give judgment accordingly."

The certificate of the presiding Judge, sending up the entire record, is found on page 75 of the case, and the opinion of the Court of Errors and Appeals affirming the judgment below in all respects, is found in *71 N. J. Law Rep., p. 552.*

If the record be examined it will appear that the defendant pleaded "not guilty" to the indictment; that while the indictment was found on the 5th of April, 1904, and the defendant arraigned and counsel assigned on the same day, the trial was not commenced until the 13th of April, and lasted all of that day and a part of the next; that Milton Demarest, Esq., a highly respectable member of the Bar of the Supreme Court of New Jersey since the year 1877, was assigned by the Court to conduct her defense; that the evidence produced by the Prosecutor of the Pleas in a dignified and considerate manner showed the commission of a most brutal murder by the defendant, her victim being a woman, into whose room on the third floor of a neighboring house the defendant walked, after having broken down the door, and who received as many as fifteen wounds, from a sharp knife, in the side and back of her neck, besides numerous others on her breast and the back of her hands. The defendant testified in her own behalf as follows:

"*Q.* When you went in the door, where was Rosa (the deceased) when you got inside of the door?

"*A.* She was near by the door; she had a baby in one arm.

"*Q.* Then what did you say to her?

"*A.* I said to her, 'Rosa, don't call me all those bad names, because if it is not to-day, it may be to-morrow, that I am going to get with Mike again.'

"*Q.* Well, what did Rosa say then?

"*A.* 'I have got to break your face, and when my husband comes home to-night I will have to do a good many more things to you.'

"*Q.* Did Rosa do anything then?

"*A.* I told her if she wants to raise any trouble. I told her to put the child away, and she had the knife

in her hand right behind her dress, and when I seen that she had the knife, and I seen she was going to stab me, and I takes, to grab her by the hair, and before she stabbed me I took the knife away from her and stabbed her.

"*Q.* Did she try to stab you that night before you stabbed her?

"*A.* Why, she had the knife that way (indicating) behind her dress, and her baby she had on her arm.

"*Q.* So you took the knife away from her, then?

"*A.* Yes, sir.

"*Q.* Is that the knife?

"*A.* I do not recollect if that is the knife, but I killed her with a knife similar to that one, the same length.

Cross examination.

"*Q.* Did you have any cuts on your hands, Anna?

"*A.* You saw me the next day in the jail, and I did not have any cuts on my hands."

The case manifests (*Record, p. 68*) that the counsel for the defendant, in his argument before the jury, conceded that the evidence showed the defendant to be guilty of murder in the second degree, but insisted that she should not be found guilty of murder in the first degree. After a careful charge by the Court, directed to explain to the jury the difference between these two degrees of the crime of murder under the New Jersey law, the jury, after due consideration, found her guilty of murder in the first degree.

I.

THE ACTION OF THE CIRCUIT COURT IN REFUSING TO GRANT A WRIT OF *habeas corpus* WAS, IN ALL RESPECTS, CORRECT, AND SHOULD BE AFFIRMED.

The foregoing recital shows—assuming federal questions are involved, for which assumption there is no basis in fact or law—that an effort in this proceeding is made to review in this court the action of the State courts, which can only be done by writ of error.

It is perfectly well settled that the permission accorded by Section 753 of the United States Revised Statutes to federal jugdes to issue writs of *habeas corpus* in all cases of this kind, does not justify the Circuit Court, or this court, on review of its action, to consider questions as on writ of error or appeal. In other words, the writ of *habeas corpus* thus authorized cannot be made to perform the functions of a writ of error or appeal. The numerous authorities, if any are needed, upon this fundamental question, are collected in *15 Am. and Eng. Ency. Law, pp. 174, et seq.*

This proceeding, in other words, is exactly like that condemned by this Court in *Storti* vs. *Massachusetts, 183 U. S. 138-141,* in the following language:

> "It is an attempt to substitute a writ of *habeas corpus* for a writ of error, and to review the proceedings in a criminal case in a State court by such collateral attack rather than by direct proceedings in error—something which this Court has repeatedly said ought seldom to be done."

See also *In Re Wood, 140 U. S. 278; In Re Tyler, 149 Id. 164.*

In *Anderson* vs. *Treat, 172 U. S. 24,* this Court reaffirmed the principle that a writ of *habeas corpus* cannot be made use of as a writ of error.

Following this principle this Court held, *In Re Echart, 166 U. S. 481,* that the prisoner was not entitled to a discharge on *habeas corpus* because the degree of the crime when divided into degrees, with punishment varying according to the degree, was not specified in the indictment (this is one of the points, as we have seen, relied upon by the petitioner in the case at bar); that the indictment was found on improper evidence—*Harkrader* vs. *Wodley, 172 U. S. 148;* the arbitrary exclusion from the panel of persons of the race of the accused—*Andrews* vs. *Schwarts, 156 U. S. 272;* the refusal of the appellate tribunal of the State to

grant the accused a writ of error—*Bergemann* vs. *Backer, 157 U. S. 655.*

See also *In Re Jugiro, 140 U. S. 291-297.*

It is therefore respectfully contended that there is nothing in this case to exclude it from the ordinary rule that a writ of *habeas corpus* will not lie to review merely an alleged error in the conduct of a trial in the State court.

II.

THE RECORD OF THE STATE COURT DISCLOSES NO ERROR REVIEWABLE IN THIS COURT.

As we have already seen, the supposed unconstitutional feature of this trial is the fact that the Court, acting upon the concession of the learned counsel for the defendant, that the evidence made the case either one of murder in the first or second degree, directed the jurors' attention solely to the legal difference between these two degrees of crime. This action of the trial Judge was the subject of severe criticism in the Court of Errors and Appeals, and was directly sustained by that court upon the ground that the circumstances conclusively established the crime of murder; and in regard to the comments and suggestions made by the trial Judge concerning the evidence, the opinion of Chief Justice Beasley, in *Smith* vs. *State, 12 Vr. 374,* was quoted with approval:

> "That a judge has a right to give his own views to the jury with respect to the value of the testimony, or upon the merits of the case, is, and always has been, the law of this State."

The fact is, the petitioner is simply seeking to review the conduct of the Judge in the trial of this case without alleging or showing that anyhing more than the legal correctness or incorrectness of the conduct of the trial is involved; without showing that a single exception, either upon the ground that

the rights guaranteed to the petitioner by the Fourteenth Amendment and the treaty with Italy, or any other federal question, were involved; indeed, without a single exception or assignment of error made during the progress of the trial, and that, too, after the whole proceeding has been most rigorously reviewed and affirmed by the court of last resort in the State of New Jersey.

Indeed, the bare fact that the record fails to disclose, in the proceedings at the trial or in the Court of Errors and Appeals, a single suggestion that the petitioner was deprived of her rights under the Constitution, treaties and laws of the United States, or that the same were in any way involved, is enough to defeat this application, it being perfectly well settled that, in order to permit this Court to review cases of this character, the alleged deprivation of the rights secured by the Constitution or laws of the United States must have been set up in the State court. *Clark* vs. *Pennsylvania, 128 U. S. 397; Caldwell* vs. *Texas, 137 U. S. 692.*

In *McNulty* vs. *California, 149 U. S. 645,* this Court, in declining to review a conviction of murder had in the State of California, said:

> "When the record, in a case brought by writ of error from a State court fails to show that a right, privilege or immunity claimed under the Constitution, or a treaty or statute of the United States, was set up or claimed, and was denied in the State court, this court is without jurisdiction to review the judgment of the State court in that respect."

Acting upon this principle, this Court, in *Clifford* vs. *Heller, 172 U. S. 641,* dismissed an appeal from an order denying a writ of *habeas corpus.*

There is no dispute in this case that the petitioner was amenable to the jurisdiction of the Bergen Court of Oyer and Terminer; that she was legally indicted; that she pleaded

not guilty; had counsel assigned to her; that she was tried and convicted under a statute of the State in no way repugnant to the Constitution or laws of the United States, and this conviction was duly affirmed by the Court of Errors and Appeals of New Jersey. Nothing is better settled than that under such circumstances the federal courts have no authority to interfere, by means of a writ of *habeas corpus*, with the execution of the sentence by the State court. This proposition was distinctly held by this Court in the case of *Bergemann* vs. *Backer, 157 U. S. 655.*

None of the matters complained of in the conduct of this trial is such as this Court can review, or in any way involve the Constitution of the United States. They are simply matters governing the procedure of trials and entirely within the province and discretion of the State tribunals. As was said by Mr. CHIEF JUSTICE FULLER, in delivering the opinion of this court in the case of *Lambert* vs. *Barrett, 157 U. S. 697-699*, "With the disposition of State questions by the appropriate State authorities, it is not the province of this Court to interfere."

Indeed, almost every question here involved has been directly passed upon by this court in previous cases. See *Kohl* vs. *Lehlbach, 160 U. S. 193*; *In Re Jugiro, 140 U. S. 291*; *Lambert* vs. *Barrett, 159 U. S. 660*; *Caldwell* vs. *Texas, 137 Id. 692*; *Hallinger vs. Davis, 146 U. S. 314.*

It is respectfully, but confidently, urged that the order of the Circuit Court Judge denying the writ of *habeas corpus* should be affirmed—

(*a*) Because the writ of *habeas corpus* is not the proper method to review the alleged errors of the State court;

(*b*) Because no federal question appears to have been raised in the State court, and

(*c*) Because the alleged errors complained of in no way involve the Constitution or laws of the United States, but

are peculiar matters of State procedure and concern, upon which the judgment of the State court is final.

ROBERT H. McCARTER,
Attorney-General of New Jersey.

Dated February 19th, 1906.